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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 512

CLARENCE N. BEACH, *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT OF QUESTIONS PRESENTED

1. Where the judgment of the Court of Appeals affirmed in part and reversed in part the judgment of the District Court and remanded the case to that court for further proceedings, was it possessed of the requisite finality for purposes of review by this Court on writ of certiorari?

2. Was petitioner, the father of an adult mental incompetent, denied due process of law when, pursuant to a statute of purely local application, he was required to pay a

portion of the cost of the incompetent daughter's treatment and maintenance at St. Elizabeths Hospital?

COUNTER-STATEMENT OF THE CASE

Petitioner is the father of Ellen J. Schuerger, an adult mental incompetent, who was, by order of the United States District Court for the District of Columbia entered September 6, 1951, adjudged to be a person of unsound mind and committed to Saint Elizabeths Hospital for treatment (R. 4).

By further order of the court, the cost of the patient's maintenance and treatment was reimbursed to the respondent from the patient's estate until August 5, 1952, when, because her estate had been reduced to about $700, further reimbursement from that source was ordered discontinued (R. 4).

Following unsuccessful efforts to persuade petitioner to pay a part of the expenses of his daughter's maintenance and treatment at the hospital, the respondent, pursuant to D. C. Code, 1961, § 21-318,[1] caused to be served upon petitioner a rule to show cause why he should not be adjudged to pay the cost, or a portion thereof, of such maintenance and treatment. In this connection it was represented to the court that, as of December 31, 1960, the respondent had expended for the maintenance and treatment of such incom-

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[1] Section 21-318. Liability of relatives for costs of maintenance and treatment.

"The father, mother, husband, wife, and adult children of an insane person, if of sufficient ability * * * shall pay the cost to the District of Columbia of his or her maintenance, including treatment in Saint Elizabeths Hospital or in any other hospital to which the insane person may be committed. * * *

"If any person hereinabove made liable for the maintenance of an insane person shall fail so to provide or pay for such maintenance, the court shall issue to such person a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of such patient. * * * If, upon such hearing, it shall appear to the court that the insane person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degrees hereinabove mentioned who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by such relatives of such sum or sums as it may find they are reasonably able to pay and as may be necessary to provide for the maintenance of such insane person. * * *".

petent at St. Elizabeths Hospital $18,109.20 and was then paying an amount in excess of $250.00 per month (R. 4-5).

At the hearing on the rule to show cause there was evidence from which the court could have found, as it did, that petitioner was then 84 years of age, that he had no dependents other than his wife, and that he was receiving free medical care from the Veterans Administration (R. 13-15).

Petitioner solely owned two parcels of unencumbered real estate in the District of Columbia, each improved by a house, one of which petitioner rented and the other of which he used as a dwelling. These two properties had a total assessed value for tax purposes of approximately $20,000.00 and a substantially higher market value (R. 4-5, 14-15, 21).

Petitioner owned, jointly with his wife, a parcel of unencumbered real estate at McKay's Beach, St. Mary's County, Maryland, improved by a house (photographs of which were received in evidence), which petitioner estimated to have a market value of between $8,000 and $10,000 (R. 15, 22-23, 44).

Petitioner also owned, jointly with his wife, stock valued at between $6,000 and $7,000 which he said had been purchased "mainly" with money earned by his wife prior to her marriage to him in 1930 (R. 22-23).

In addition, petitioner had on deposit in personal checking and savings accounts approximately $12,000, consisting principally of money he had inherited from his mother, plus another $3,000 in a savings account held jointly with his wife (R. 27-28).

Petitioner's annual income had remained substantially constant since 1951. For the year immediately preceding the hearing, his annual income was approximately $5,900, consisting of a Civil Service annuity of $2,628; a veteran's pension of $1,219; rental from one of his houses in the District of Columbia of about $1,380; and interest on savings accounts and dividends on stock of about $700 (R. 20, 26-27).

On the basis of such findings the court, on April 10, 1962, entered an order adjudging petitioner liable to the respond-

ent for a part of the expenses of his daughter's maintenance and treatment at St. Elizabeths Hospital (R. 47-48).

By the terms of the order, judgment was entered for the respondent against the petitioner in the sum of $8,700.00 (computed at the rate of $75.00 per month from August 5, 1952), in full satisfaction of all claims against petitioner for the maintenance and treatment of his daughter at St. Elizabeths Hospital during the period August 5 through May 5, 1962.

It was ordered further that, for the future maintenance and treatment of his daughter, petitioner shall pay the respondent $75.00 per month until she is discharged from the Hospital or until further order of the court. (R. 47-48).

In its opinion and judgment dated July 5, 1963, the United States Court of Appeals for the District of Columbia Circuit affirmed in part the judgment of the District Court and vacated it in part, saying:

> "The judgment will be affirmed insofar as it requires payment of $75.00 per month from the date the proceedings against appellant were instituted. As to any amount prior thereto the judgment is vacated but may be reinstated in an amount equal to $75.00 per month for a period determined as above indicated, to which end the case will be remanded to the District Court."

Because of the pendency in this Court of a petition for writ of certiorari to review the judgment of the Court of Appeals, no action was taken to initiate further proceedings in the District Court.

ARGUMENT

I

The judgment of the Court of Appeals is not a final judgment for purposes of review on writ of certiorari.

The Court of Appeals, by its decision, determined that petitioner is liable for a portion of the cost of maintenance

and treatment of his daughter, an adult incompetent, at St. Elizabeths Hospital. The court then concluded by saying:

> "The judgment will be affirmed insofar as it requires payment of $75.00 per month from the date the proceedings against appellant were instituted. As to any amount prior thereto the judgment is vacated but may be reinstated in an amount equal to $75.00 per month for a period determined as above indicated, to which end the case will be remanded to the District Court." (App. 1a-8a.)[2]

1952

It is now so well settled as to hardly require the citation of authority that a judgment of an intermediate court of appeals reversing in part and affirming in part the judgment of a lower court is not a final judgment for purposes of review by the Supreme Court of the United States, unless the judgment is such that no further proceedings can be had in the lower court except to carry out its mandate. See 4 C. J. S., *Appeal and Error*, § 152, pp. 506-507.

In this connection, this Court said in *Republic Natural Gas Co.* v. *State of Oklahoma*, 334 U. S. 62, 67, 92 L. Ed. 1212, 1219:

> "No self-enforcing formula defining when a judgment is 'final' can be devised. Tests have been indicated which are helpful in giving direction and emphasis to decision from case to case. Thus, the requirement of finality has not been met merely because the major issues in a case have been decided and only a few loose ends remain to be tied up—for example, where liability has been determined and all that needs to be adjudicated is the amount of damages. * * *"

And so it was in *Bruce, Administrator of Tobin, et al.* v. *Tobin*, 245 U. S. 18, 62 L.Ed. 123, where a father brought action to recover a share of a fund collected by his deceased

[2] Appendix to Petitioner's brief.

son's administrator as damages under the Employers' Liability Act. The state trial court rejected the father's claim entirely. The State Supreme Court reversed, and, without specifically fixing the amount of the fund to which he was entitled, remanded the case for a new trial with directions to accomplish that result. The father thereupon applied to this Court for a writ of certiorari to review the judgment of the State Supreme Court. Although the judgment of the State Supreme Court was, in a sense, final because it determined the ultimate right of the father to recover a share of the fund and declared the general principles by which that right was to be measured, this Court denied the application as premature since, upon the face of the record, it appeared that the judgment was not final for purposes of review on writ of certiorari.

To the same effect was *Martinez* v. *International Banking Corporation*, 220 U. S. 214, 55 L.Ed. 438. There, the Supreme Court of the Philippine Islands reversed a judgment of the trial court and remanded with instructions to enter judgment for the plaintiff but without fixing the definite amount of the judgment. The plaintiff appealed to this Court which, in holding that the judgment of the Supreme Court of the Philippine Islands did not have the requisite finality, said at p. 223:

> "It follows that although the appellate court fixed the rights and liabilities of the parties, it in effect referred a question in the case to the subordinate court for further judicial action; hence its judgment was not final for the purpose of an appeal or writ of error. * * * Until, therefore, the trial court by its judgment ascertains and fixes the actual indebtedness of the plaintiff and complies with the other directions contained in the mandate it cannot be said that a final decree has been entered in the cause. Indeed, on the very face of the decree of the Supreme Court of the Philippine Islands it is manifest that this court, if it took jur-

> jsdiction, could not finally dispose of the case in the event it affirmed the judgment below, since all it could do would be to consider the matters determined by the Supreme Court and do as that court did, remand the cause for further proceedings in order that the rights of the parties might be thereafter finally passed upon. * * *"

See also: *Earle* v. *Myers*, 207 U. S. 244, 52 L.Ed. 191.

Here, because the exact amount of petitioner's liability cannot be determined without further proceedings in the trial court, it is too clear for further discussion that the judgment of the Court of Appeals is not a final judgment for purposes of review by this Court on writ of certiorari.

II

No question of substance is presented for review.

Assuming, *arguendo*, that the judgment of the Court of Appeals possesses the finality required for review by this Court, the writ of certiorari should, nevertheless, be denied because no question of federal law of of public importance is involved.

The questions presented arose out of the construction of a statute of purely local application and significance, and were resolved by the Court of Appeals in a manner consistent with that court's decisions in *Hart* v. *Commissioners of the District of Columbia*, 81 U. S. App. D. C. 154, 155 F. 2d 877 (1946); *Fitzhugh* v. *District of Columbia*, 71 U. S. App. D. C. 290, 109 F. 2d 837 (1940); and *Baker* v. *District of Columbia*, 39 App. D. C. 42 (1912). In each of these cases, the Court of Appeals was concerned with the extent of the liability of an incompetent's estate, under Section 21-318, *supra*, for the cost of his maintenance and treatment.

The Court of Appeals, in commenting on the decisions, said:

> * * * While these decisions may arguably be said to assume the validity of such a statute they do not discuss the constitutionality of imposing liability upon relatives. Since the relative involved in the present case is the father we limit our decision to one who bears that relationship to the incompetent.
>
> "State courts have upheld statutes requiring contribution by relatives more distantly related by consanguinity than a father. The legislative authority of Congress with respect to the District of Columbia is comparable to the police power of a state legislature. *Langsburgh* v. *District of Columbia*, 11 App. D. C. 512 (1897). * * *" (App. 3a–4a.)[3]

The Court of Appeals then observed that there is apparent, in the statute involved, no purpose to avoid public responsibility for the care and treatment of mental incompetents. Rather, said the court:

> * * * [W]hen the law turns also to the father for help, if he is able to give it, when the estate of the incompetent is insufficient, it does so only to supplement the public responsibility. Placing a secondary obligation upon the father finds its validity in the reasonableness of attaching legal significance to the natural bonds of consanguinity. It is not unreasonable, it is not a denial of due process, for the law to attach an enforceable obligation to the moral obligation which exists in the usual family relationship of father and daughter. Recognition by statute of this obligation is not at odds with recognition that the public in many cases is called upon to supply total support for such individuals, 'whose faculties or estates are unable to do so.'" (App. 5a).[4]

This Court has consistently refused to review decisions of courts of the District of Columbia in cases, such as the

[3] Appendix to Petitioner's brief.
[4] Appendix to Petitioner's brief.

instant case, which arise out of the enforcement of laws limited in their application to the District of Columbia. *American Security and Trust Company* v. *District of Columbia*, 224 U. S. 491, 56 L. Ed. 856; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285, 80 L. Ed. 229; *District of Columbia* v. *Pace*, 320 U. S. 698, 702, 88 L. Ed. 408.

It is abundantly clear, when petitioner's brief is viewed against the background of the record, that he has endeavored to convert a case of a purely local nature into one involving a non-existent constitutional issue. As this Court said in *United Surety Company* v. *American Fruit Product Company*, 238 U. S. 140, 59 L. Ed. 1238, the "* * * * constitutional point is a mere pretext put forward in order to open other questions that otherwise could not come here."

CONCLUSION

Because petitioner has presented nothing of substance to establish that this case is within the class of cases contemplated by Rule 19 (b) of the rules of this Court, it is respectfully submitted that the writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

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